

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS
(Jointly Administered)

**JOINT STATUS REPORT OF AMBAC ASSURANCE CORPORATION AND THE
FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, AS
REPRESENTATIVE OF THE COMMONWEALTH OF PUERTO RICO, AND THE
PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY
PURSUANT TO THE COURT'S JANUARY 22, 2021 ORDER**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

To the Honorable United States Magistrate Judge Judith Gail Dein:

Ambac Assurance Corporation (“Ambac”), the Financial Oversight and Management Board for Puerto Rico (the “Board”), as sole Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth” or “Debtor”) pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and, together with the Board, the “Government Parties”),² respectfully submit this Joint Status Report pursuant to the Court’s order dated January 22, 2021 (ECF No. 15696).³

I. PROCEDURAL BACKGROUND

1. On October 28, 2019, Ambac filed *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets* (ECF No. 9022) (the “Assets Motion”), and *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Cash Restriction Analysis* (ECF No. 9023) (the “Cash Motion” and, together with the Assets Motion, the “Original Rule 2004 Motions”).

2. On November 8, 2019, the Government Parties filed the *Urgent Motion of Financial Oversight and Management Board for Puerto Rico and Puerto Rico Fiscal Agency and Financial Advisory Authority to Strike (A) Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets [ECF No. 9022] and (B) Ambac Assurance Corporation’s Motion for Entry of Order Authorizing*

² Ambac and the Government Parties are collectively referred to as the “Parties.”

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the *Joint Status Report of Ambac Assurance Corporation and the Financial Oversight and Management Board for Puerto Rico, as Representative of the Commonwealth of Puerto Rico, and the Puerto Rico Fiscal Agency and Financial Advisory Authority Pursuant to the Court’s December 7, 2020 Order* (ECF No. 15690) (the “January 21 Joint Status Report”).

Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Cash Restriction Analysis [ECF No. 9023] and for Sanctions (ECF No. 9131) (the “Motion to Strike”).

3. On January 23, 2020, the Court (Swain, J.) issued a memorandum order denying the Motion to Strike (ECF No. 10332) (the “Memorandum Order”). The Memorandum Order directed the Parties to meet and confer by February 3, 2020 concerning the scope and mechanics of discovery responsive to the Original Rule 2004 Motions. (*Id.* at 9.)

4. On November 12, 2020, following the filing of numerous joint status reports discussing the Parties’ meet-and-confer efforts, the Court (Dein, M.J.) denied without prejudice the Original Rule 2004 Motions, stating that “[i]n light of the substantial work the [P]arties have done narrowing the issues and resolving the disputes initially presented in the [Original] Rule 2004 Motions[,] . . . and to avoid confusion of the record,” Ambac should file “a new Rule 2004 motion limited to the issues in dispute.” (*Order* (ECF No. 15093) at 2 (the “November 12 Order”).)

5. On November 20, 2020, Ambac filed its New Cash Rule 2004 Motion,⁴ limited to the issues on which the Parties had reached an impasse at that time, pursuant to the November 12 Order, and reserving Ambac’s right to seek additional judicial relief in the event Ambac and the Government were to reach an impasse with regard to other cash- and assets-related requests. The New Cash Rule 2004 Motion seeks an order directing the Board to produce certain documents related to the Commonwealth’s and the Board’s publicly available cash restriction analysis. The New Cash Rule 2004 Motion has been fully briefed and remains *sub judice*.

⁴ “New Cash Rule 2004 Motion” refers to *Ambac Assurance Corporation’s Motion for an Order Directing Cash Rule 2004 Discovery from the Financial Oversight and Management Board for Puerto Rico* (ECF No. 15220).

6. On January 21, 2021, the Parties filed the January 21 Joint Status Report. On January 22, 2021, the Court ordered the Parties to file a further joint status report by February 15, 2021. (*Order* (ECF No. 15696).)

7. On February 4, 2021, Ambac filed its New Assets Rule 2004 Motion,⁵ requesting authorization under Bankruptcy Rule 2004 to seek discovery directly from six “prioritized” Commonwealth entities regarding their assets. Consistent with the Joint Informative Motion⁶ filed by Ambac and AAFAF on February 4, 2021, Ambac and AAFAF met-and-conferred on February 11, 2021 regarding a briefing schedule for the New Assets Rule 2004 Motion. On February 12, 2021, Ambac and AAFAF submitted their joint proposed briefing schedule for the New Assets Rule 2004 Motion to the Court, under which any response or objection to the New Assets Rule 2004 Motion is due by March 5, 2021, and Ambac’s reply is due by March 16, 2021.⁷

II. THE PARTIES’ PROGRESS SINCE THE PREVIOUS UPDATE TO THE COURT

8. Since the filing of the January 21 Joint Status Report, the Parties have continued to exchange correspondence⁸ and met-and-conferred telephonically on February 1, 2021

⁵ “New Assets Rule 2004 Motion” refers to *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets* (ECF No. 15802).

⁶ “Joint Informative Motion” refers to *Joint Informative Motion of Ambac Assurance Corporation and the Puerto Rico Fiscal Agency and Financial Advisory Authority with Respect to Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets* (ECF No. 15804).

⁷ (*Joint Informative Motion of Ambac Assurance Corporation and the Puerto Rico Fiscal Agency and Financial Advisory Authority with Respect to Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets* (ECF No. 15843), at 2.)

⁸ The Parties’ positions with regard to each of Ambac’s requests since the filing of the January 21 Joint Status Report are memorialized in the following correspondence: (i) the Board’s letter to Ambac dated January 22, 2021 (attached hereto as Exhibit A); (ii) AAFAF’s letter to Ambac dated January 26, 2021 (attached hereto as Exhibit B); (iii) Ambac’s letter to the Government Parties dated January 29, 2021 (attached hereto as Exhibit C); (iv) AAFAF’s letter to Ambac dated January 31, 2021 (attached hereto as Exhibit D); (v) AAFAF’s letter to Ambac dated February 5, 2021 (attached hereto as Exhibit E); and (vi) the Board’s letter to Ambac dated February 10, 2021 (attached hereto as Exhibit F).

(the “February 1 Meet-and-Confer”) and February 11, 2021 (the “February 11 Meet-and-Confer”).

The status of the Parties’ discussions relating to Ambac’s assets- and cash-related requests is as follows:

A. Status of Assets Requests (Directed Principally to AAFAF)

9. The Parties continue to negotiate in good faith regarding Ambac’s assets-related requests that are unrelated to the New Assets Rule 2004 Motion.

10. Since the filing of the January 21 Joint Status Report, AAFAF has produced additional responsive documents related to the Prioritized Commonwealth Assets⁹ and Prioritized Commonwealth Entities¹⁰ identified by Ambac, as well as CRIM’s tax arrears portfolio. AAFAF continues to investigate the availability of additional documents related to the Prioritized Commonwealth Assets and Prioritized Commonwealth Entities and Ambac’s January 11, 2021 follow-up requests for information related to CRIM’s tax arrears portfolio.

B. Status of Cash Requests (Directed Principally to the Board)

11. The Parties continue to negotiate in good faith regarding Ambac’s cash-related requests that are unrelated to the New Cash Rule 2004 Motion, though the Board and Ambac appear to have reached an impasse on one issue, as described below.

⁹ “Prioritized Commonwealth Assets” refers to the assets identified by Ambac in its March 16, 2020 email (ECF No. 12484-2).

¹⁰ “Prioritized Commonwealth Entities” refers to the entities identified by Ambac in its November 25, 2020 letter (ECF No. 15350-2).

1. *Update Regarding Requests as to Which the Parties Continue to Make Progress.*

12. As noted in the December 4 Joint Status Report¹¹ and the January 21 Joint Status Report, the Government Parties agreed to investigate whether a more up-to-date version of the “Inventory of Central Government’s Bank Accounts” referenced in the Amended Disclosure Statement¹² is available. The Government Parties’ investigation remains ongoing.

13. Since the filing of the January 21 Joint Status Report, the Board: (i) produced a calculation back-up document related to the December 2020 Presentation; and (ii) identified by Bates number previously produced factual source materials and raw data for the October 2019 Presentations¹³ and Amended Disclosure Statement that relate to nine categories of bank accounts purportedly containing “restricted” funds. During the February 11 Meet-and-Confer, the Board took under advisement Ambac’s follow-up request for identification of documents underlying the Duff & Phelps Report¹⁴ that are related to the nine categories of bank accounts. The Board has also offered to engage with Ambac to the extent it reviews the documents identified by the Board and disagrees with the Board’s determination that any account contains restricted cash.

14. Additionally, the Board has advised that: (i) it will produce factual source materials and raw data underlying the December 2020 Presentation, including documents related

¹¹ “December 4 Joint Status Report” refers to *Joint Status Report of Ambac Assurance Corporation and the Financial Oversight and Management Board for Puerto Rico, as Representative of the Commonwealth of Puerto Rico, and the Puerto Rico Fiscal Agency and Financial Advisory Authority Pursuant to the Court’s November 12, 2020 Order* (ECF No. 15350).

¹² “Amended Disclosure Statement” refers to the *Disclosure Statement for the Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* (ECF No. 11947).

¹³ “October 2019 Presentations” refers, collectively, to *Mediation: Summary of Cash Restriction Analysis*, dated October 2, 2019 (ECF No. 15220-3), and *Bank Account Analysis: Status Update – June 30, 2019 Balances*, dated October 2, 2019 (ECF No. 15220-4).

¹⁴ “Duff & Phelps Report” refers to *IFAT Report on Title III Bank Accounts*, dated March 12, 2019 (ECF No. 15220-2).

to \$3.8 billion in CARES Act funds that have been classified as restricted, to the extent any such documents exist; (ii) its production of such materials will be categorized by account and completed in the coming weeks; (iii) it continues to investigate Ambac's questions regarding the relationship between the December 2020 Presentation and the presentation titled *Section 209 Requirements for Termination of the Oversight Board*, distributed in connection with the Board's October 30, 2020 public meeting, as well as the availability of calculation back-up documents related to the Amended Disclosure Statement; and (iv) it will create a "key" identifying the Ernst & Young identifier that corresponds to each account reviewed in connection with the cash restriction analysis, to the extent an Ernst & Young identifier was assigned to a particular account, and will attempt to identify the Duff & Phelps identifier corresponding to each of the accounts reviewed, to the extent a Duff & Phelps identifier was assigned.

2. *Update Regarding Requests for Which the Parties Have Reached an Impasse.*

15. The Parties have reached an impasse with regard to Ambac's request that the Board produce notations that the Board's advisors had applied to certain factual source materials and raw data underlying the Duff & Phelps Report and the October 2019 Presentations, and which were removed from the documents by the Board prior to production. The Board's position is that it has already produced those factual source materials to Ambac in the form the Board received them. Ambac believes it was improper for the Board to remove the notations from these materials prior to production, and has reserved all rights to seek judicial intervention to compel production of complete copies of the documents with the notations reinserted.

III. PROPOSED NEXT STEPS

16. The Parties have agreed to continue to meet and confer regarding Ambac's assets- and cash-related requests that are unrelated to the New Rule 2004 Motions,¹⁵ and would propose to have an additional meet-and-confer no later than February 26, 2021 and to submit a further status report to the Court no later than March 4, 2021.

¹⁵ "New Rule 2004 Motions" refers, collectively, to the New Cash Rule 2004 Motion and the New Assets Rule 2004 Motion.

Dated: February 15, 2021
San Juan, Puerto Rico

FERRAIUOLI LLC

By: /s/ Roberto Cámara-Fuertes
Roberto Cámara-Fuertes (USDC-PR No. 219002)
Sonia Colón (USDC-PR No. 213809)
221 Ponce de León Avenue, 5th Floor
San Juan, PR 00917
Telephone: (787) 766-7000
Facsimile: (787) 766-7001
Email: rcamara@ferraiuoli.com
scolon@ferraiuoli.com

MILBANK LLP

By: /s/ Atara Miller
Dennis F. Dunne (admitted *pro hac vice*)
Atara Miller (admitted *pro hac vice*)
Grant R. Mainland (admitted *pro hac vice*)
John J. Hughes, III (admitted *pro hac vice*)
Jonathan Ohring (admitted *pro hac vice*)
55 Hudson Yards
New York, NY 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219
Email: ddunne@milbank.com
amiller@milbank.com
gmainland@milbank.com
jhughes2@milbank.com
johring@milbank.com

Attorneys for Ambac Assurance Corporation

PROSKAUER ROSE LLP

By: /s/ Martin J. Bienenstock

Martin J. Bienenstock
Margaret A. Dale
Michael T. Mervis
Julia D. Alonzo
Laura Stafford
(Admitted *Pro Hac Vice*)
Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

O'NEILL & BORGES LLC

By: /s/ Hermann D. Bauer

Hermann D. Bauer (USDC No. 215205)
250 Muñoz Rivera Ave., Suite 800
San Juan, PR 00918-1813
Tel: (787) 764-8181
Fax: (787) 753-8944

***Attorneys for the Financial Oversight and
Management Board as representative of the
Commonwealth***

O'MELVENY & MYERS LLP

By: /s/ Peter Friedman

John J. Rapisardi
Times Square
New York, NY 10036
Tel: (212) 326-2000
Fax: (212) 326-2061
Email: jrapisardi@omm.com

-and-

Peter Friedman
1625 Eye Street, NW
Washington, DC 20006
Tel: (202) 383-5300
Fax: (202) 383-5414
Email: pfriedman@omm.com

-and-

Elizabeth L. McKeen
Ashley M. Pavel
610 Newport Center Drive
17th Floor
Newport Beach, California 92660
Tel: (949) 823-6900
Fax: (949) 823-6994
Email: emckeen@omm.com
apavel@omm.com

MARINI PIETRANTONI MUÑIZ LLC

By: /s/ Luis C. Marini-Biaggi

Luis C. Marini-Biaggi
USDC No. 222301
Email: lmarini@mpmlawpr.com
Carolina Velaz-Rivero
USDC No. 300913
250 Ponce de León Ave.
Suite 900
San Juan, Puerto Rico 00918
Tel: (787) 705-2173
Fax: (787) 936-7494
lmarini@mpmlawpr.com
cvelaz@mpmlawpr.com

*Attorneys for the Puerto Rico Fiscal Agency
and Financial Advisory Authority*

CERTIFICATE OF SERVICE

I hereby certify that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

/s/ Roberto Cámara-Fuertes

Roberto Cámara-Fuertes (USDC-PR No. 219002)

221 Ponce de León Avenue, 5th Floor

San Juan, PR 00917

Telephone: (787) 766-7000

Facsimile: (787) 766-7001

Email: rcamara@ferraiuoli.com